



SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

RIN 3245-AH92

Small Business Lending Company Application Process

AGENCY: U.S. Small Business Administration.

ACTION: Notification.

SUMMARY: The purpose of this notification is to announce that SBA's Office of Capital Access (OCA) is opening the application period for new Small Business Lending Companies (SBLC) licenses from June 1, 2023, to July 31, 2023, and share the process by which interested entities may apply. SBA is not accepting applications for Community Advantage SBLCs (CA SBLCs) at this time; however, qualified entities may apply under the Community Advantage pilot authority until September 30, 2023.

DATES: This document is effective on June 1, 2023. SBA will accept applications for new SBLC licenses from June 1, 2023, to July 31, 2023.

Comment Date: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments, identified by SBA docket number SBA-2023-0006, by any of the following methods:

- Federal eRulemaking Portal: <https://www.regulations.gov/>. Follow the instructions for submitting comments.
- Mail: Jihoon Kim, Office of Financial Program Operations, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

- Hand Delivery/Courier: Darrel Eddingfield, Office of Financial Assistance, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.
SBA will post all comments on <https://www.regulations.gov>.

If you wish to submit confidential business information (“CBI”) as defined in the User Notice at <https://www.regulations.gov>, please submit the information to Jihoon Kim, Office of Financial Program Operations, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416; or send an email to SBLCApps@sba.gov. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination as to whether it will publish the information.

FOR FURTHER INFORMATION CONTACT: Jihoon Kim, Director, Office of Financial Program Operations (OFPO), Office of Capital Access, Small Business Administration, at 202-205-6024 or Jihoon.Kim@sba.gov. The phone number above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission’s TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background Information

On April 12, 2023, SBA published the Final Rule on Small Business Lending Company (SBLC) Moratorium Rescission and Removal of the Requirement for a Loan Authorization (88 FR 21890, effective May 12, 2023). Through that rule, SBA lifted the self-imposed moratorium on licensing new SBLCs and established the plan to approve three SBLCs in the first year following implementation. An SBLC, as defined in 13 CFR 120.10, is a non-depository lending institution authorized by SBA to make loans pursuant to section 7(a) of the Small Business Act and loans to Intermediaries in SBA's Microloan program. An SBLC is:

- Supervised and examined solely by SBA at the federal level, although the entity may be subject to state supervision;
- Subject to additional SBA Loan Program Requirements, as defined in 13 CFR 120.10, including but not limited to regulations specific to SBLCs regarding formation, capitalization, and enforcement actions; and
- Subject to all other 7(a) Loan Program Requirements including but not limited to, those specific to origination, servicing, and liquidation.

This SBLC moratorium was put in place in 1982, prior to access to modern digital tools that enhance oversight and mitigate risk. For 41 years, SBA has overseen the application and approval process approximately 60 times for the transfer of the existing SBLC licenses including determining the capability and experience of the acquiring entity's leadership; the financial capacity to make, service, and liquidate loans; and the safety and soundness of its portfolio. This ensures compliance with SBA's regulatory requirements and origination of loans based on standards consistent with similarly sized commercial loans made by other lenders.

As stated above, the purpose of this notification is to announce that SBA's Office of Capital Access is opening the application period for new Small Business Lending Companies (SBLC) licenses. SBA is also maintaining the process for purchasing one of the existing lending authorities from a current SBLC in accordance with 13 CFR 120.468.

Although SBA is not accepting applications for Community Advantage SBLCs (CA SBLCs) in this open period, SBA will continue to accept applications for new lenders in SBA's Community Advantage (CA) Pilot Program through the end of the CA Pilot Program, which will sunset on September 30, 2023. Entities that are interested in applying to become a CA Pilot lender should follow the application instructions in the Community Advantage Participant Guide, version 7, effective May 31, 2022. In accordance with SBA Information Notice 5000-846918, Community Advantage Small Business Lending Company Conversion, effective May 1, 2023, SBA will continue to work with all CA Pilot lenders to transition them to CA SBLCs.

II. SBLC Requirements

SBLCs must comply with SBA's requirements for SBA Lenders, SBA Supervised Lenders, and the additional requirements presented in 13 CFR part 120, subpart D, §§ 120.470 through 490 specifically for SBLCs.

SBLCs must:

1. Submit to the D/OCRM via OCRMSBLC@sba.gov for review their credit policy that demonstrates compliance with Title 13 of the CFR and SBA's Standard Operating Procedures (SOPs) for origination, servicing, and liquidation of 7(a) loans, and which must be acceptable to SBA in its discretion.
2. Submit to the D/OCRM via OCRMSBLC@sba.gov for review and approval annual validation, with supporting documentation and methodologies

demonstrating that any scoring model used by the SBLC is predictive of loan performance.

3. Each SBLC's Board of directors must adopt and fully implement an internal control policy that provides adequate direction to the institution for effective control over and accountability for operations, programs, and resources. The Board-adopted internal control policy must, at a minimum, comply with 13 CFR 120.460. For example:
 - a. The internal control policy implemented must ensure satisfactory monitoring and management of the SBA loan portfolio, including but not limited to, providing for a periodic loan review function to be performed at least annually by a person who is not directly or indirectly responsible for loan making or by outside contractors.
 - b. It must include a list of monthly reports provided by the SBLC's management for Board review to support adequate Board oversight.
 - c. It must provide for internal controls for loan making, servicing and liquidation.
 - d. It must provide for a risk rating system to risk classify SBA loan assets satisfactory to SBA.
 - e. Internal control policies and procedures must include provisions to ensure compliance with SBA's Loan Program Requirements on eligibility.
 - f. Internal control policies and procedures must include provisions to ensure the SBLC exercises due diligence and prudent oversight of its third-party vendors, including Lender Service Providers (LSP) and other loan Agents. Such policies and procedures should include, but not be limited to, monitoring

performance of loans referred by an Agent or where an Agent provided assistance.

- g. SBLCs must provide documentation demonstrating that the internal control policies and procedures are fully implemented and followed.
- 4. SBLCs must adhere to their internal policies and procedures for originating, closing, servicing, and, when necessary, liquidating SBA loans. When SBA procedures require Lenders to follow their own policies and procedures on their similarly-sized, non-SBA guaranteed loans, SBLCs must follow the written policies and procedures that have been reviewed by SBA.
- 5. An SBLC may not make a loan to an Applicant that has received assistance from an affiliated Small Business Investment Company (SBIC). (13 CFR 120.476)

III. Process to Acquire an SBLC License

Per SBA regulations, to acquire an SBLC license, including a CA SBLC license, an entity must (1) purchase one of the existing lending authorities from a current SBLC or CA SBLC; or (2) apply for a new SBLC license or CA SBLC license when SBA opens an application period for new SBLC and/or CA SBLC licenses.

(1) Purchase Existing SBLC Licenses, including CA SBLC Licenses

SBA does not participate in facilitating the transfer of an SBLC's SBA lending authority. Private party negotiations culminate in a definitive purchase and sale agreement which includes the terms and conditions related to the transfer of the SBA lending authority. This agreement must include provisions which condition the transfer upon the prior written approval of the SBA.

SBA's prior written approval is required per 13 CFR 120.468 for any proposed transaction or event that results in a change in ownership or control by any entity

or person(s) not previously approved by SBA. Control as defined in this paragraph means the possession, direct or indirect, or the power to direct or cause the direction of the management or policies of an SBLC, whether through the ownership of voting securities, by contract, or otherwise.

To obtain written approval, the selling SBLC must send a written request or notice of intent to transfer to the SBLCApps@sba.gov. The written request should include:

- a. The name and address of the acquiring concern; and
- b. The primary name and contact information for the acquiring concern's contact.

The purchasing entity must submit an SBLC Application, as outlined below, for SBA's prior written consent with respect to any change of ownership or control transaction as specified in 13 CFR 120.468. The purchasing entity must also file a request for transfer with SBLCApps@sba.gov.

For change of control transactions, the Lender will need to reapply for any delegated authorities separately.

If the proposed change of ownership is for less than a majority interest, SBA may in its sole discretion limit the items required from the Lender in the SBLC Application, as outlined below, to support a request for prior written SBA consent.

(2) New SBLC Application Process, including CA SBLCs

SBA will issue notices in the *Federal Register* with information regarding the SBLC license application processes, including important timelines and

procedures. Applicants must complete and submit an SBLC Application, as outlined below, during designated application periods.

IV. SBLC Application

The entity applying for a new SBLC license must submit an executed electronic scanned copy (in pdf format) to SBLCApps@sba.gov addressing each of the elements set forth below (“SBLC Application”). The SBLC Application must be complete and organized in tabular format. The application must include:

1. The Legal name, address, telephone, and email address of the proposed SBLC;
2. Identification of the form of organization of the proposed SBLC along with file-stamped copies of the concern’s certificate of incorporation, certificate of formation or certificate of limited partnership (as applicable), and a copy of the concern’s corporate bylaws, limited liability company operating agreement, or limited partnership agreement (as applicable);
3. Identification of the proposed SBLC’s capitalization including the form of ownership, the identification of all classes of equity capital and proposed funding amounts, rights and preferences accorded to each class of stock or members interest (including voting rights, redemption rights, and rights of convertibility) and conditions for transfer, sale, or assignment of these interests;
4. The proposed SBLC’s geographic area of operation;
5. Identification of all officers, directors, managing partners, managing members, and Key Employee(s) of the proposed SBLC, which includes senior managers, members of loan committees, and individuals who have a meaningful participation in the direction of the operations, policies, or financial decisions of the proposed SBLC), and all other individuals or entities that propose to hold an equity interest of at least 10% of the economic interest in any class of stock or

ownership interest in the proposed SBLC (such identification should include a discussion of any prior SBA experience);

- a. An organization chart showing the relationship of the proposed SBLC with all related Associates (see Appendix 3, Definitions) and affiliates within the organization;
- b. All individuals or entities identified in this paragraph must submit an executed SBA Form 1081 and either a Form FD-258 (fingerprint card) or Electronic Fingerprint Submission. SBA Form 1081 and the Form FD-258 or Electronic Fingerprint Submission must be signed and dated within 90 days of submission to SBA.
- c. A director or Key Employee of the lender organization is only required to submit either Form FD-258 (fingerprint card) or Electronic Fingerprint
- d. Submission if the director or Key Employee answered affirmatively to questions 10a, 10b, 10c, 11a and/or 11b on the SBA Form 1081. For SBLCs, proof of fidelity insurance coverage as detailed in 13 CFR 120.470(e).

6. A comprehensive business plan that details:

- a. The nature of proposed operations, including the organizational units involved in sourcing, evaluating, underwriting, closing, disbursing servicing, and liquidating small business loans in the organization;
- b. The identification of all sources of capital used to finance lending operations;
- c. An operations plan detailing the nature of the Lender's proposed loan

activity, the volume of activity projected over the first 3 years as an SBA Lender, projected balance sheets, income statements and statement of cash flows of the Lender, with alternative profit and loss scenarios based on run rates equivalent to 70% and 50% of projected loan activity, the type and projected amount of financing needed to support its lending plan, along with a discussion of Lender's proposed wind-down plan in the event the Lender decides to leave the program;

- d. A detailed analysis of the Lender's projected secondary market activities during the first 3 years of operation, including a sensitivity analysis of the effect any changes in premium from the sale of the guaranteed portion of 7(a) loans in SBA's secondary market may have on the Lender's prospective earnings. The analysis must also include a description of the Lender's plans (if any) to securitize or sell participations in the unguaranteed portion of 7(a) loans; and
- e. If the Lender intends to acquire any 7(a) loans, a written plan detailing the extent of this acquisition activity in its operating plan, and how the Lender will manage the transition of the 7(a) loan portfolio;

- 7. All documents associated with any type of external financing expected to be undertaken by the proposed SBLC;
- 8. A written statement from an authorized official of the acquiring concern certifying that the SBLC will not be primarily engaged in financing the operations of an Affiliate as defined in 13 CFR 121.103.
- 9. The most recent audited financial statements of the acquiring concern if it has been in operation for more than 1 year, or the audited financial statements of the acquiring concern's parent company.

10. A certified copy of a Board, limited partners, or members resolution specifying the individual(s) or official(s) granted the authority by the organization to submit this SBLC application;
11. A certification by the proposed SBLC that it is in full compliance with all Federal, State, and local laws;
12. A written legal opinion of independent counsel (“Independent Counsel” is counsel that is not an Associate of the lender), satisfactory to SBA that addresses whether the proposed SBLC:
 - a. Is duly formed, organized, and validly existing in good standing under the laws of the State of its organization, and is in full compliance with all Federal, State, and local laws in connection with the formation and organization of the proposed SBLC; and
 - b. Has the power, legal right, and authority to enter into the sale transaction.

V. Evaluation Process

SBA reserves the right to deny any entity applying for or proposing to acquire an SBLC’s SBA lending authority, in its sole discretion. In addition to SBA’s evaluation of the elements required in the SBLC Application, SBA may consider risk factors in its evaluation. These factors include, but are not limited to:

- The lending policies of the proposed SBLC, including those for non-SBA loans, and their alignment with SBA’s mission;
- Historical performance measures (such as default, purchase and loss rate);
- Whether the applicant is subject to any legal proceedings, enforcement action, order or agreement with a regulator or the presence of other related concerns;

- Other performance data associated with the acquiring concern or its senior management team, along with other relevant information (such as SBA-observed gaps in small business lending not served by the existing 7(a) Lender population, including small-dollar lending and loans to underserved populations); and
- Affiliation with lenders or lender service providers previously sanctioned by SBA.

In the review process, SBA will not consider the following factors in its review:

- Timing of application submission, so long as the application is submitted within an open application period.

Once received, the Director, Office of Financial Program Operations (D/OFPO), in consultation with the Director, Office of Credit Risk Management (D/OCRM), Director, Office of Financial Assistance (D/OFA), Director, Office of Performance and System Management (D/OPSM), and the Deputy Associate Administrator of the Office of Capital Access or designee, makes the final determination on the application.

SBA will notify all applicants whether they have been approved. If approved, written notification will be provided to the applicant. Included with this letter will be SBA Form 750 for execution and return to SBA.

VI. Timeline

The SBLC application period is open as of **Thursday, June 1, 2023**, and SBA will continue accepting applications through 11:59 pm Eastern time on **Monday, July 31, 2023**. After such period, SBA will close the application period, review and process all applications in accordance with the instructions provided above, and award up to three SBLC licenses. SBA anticipates issuing the new SBLC licenses in fall of 2023.

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2023-10310 Filed: 5/19/2023 8:45 am; Publication Date: 5/22/2023]